

INDEX OF EXHIBITS FOR EPA HEADQUARTERS FOIA APPEALS

<u>Exhibit</u>	<u>Description</u>
1	Letter. John Hall, H&A to Lisa Jackson, EPA Administrator and Arthur A. Elkins, Jr., Inspector General. RE: Great Bay Nutrient Criteria and Permit Development- Documentation of Apparent Scientific Misconduct and Agency Bias; Request for Transfer of Matter to Independent Panel of Experts for Review. May 4, 2012 (without attachments).
2	Letter. Nancy Stoner, EPA Office of Water Acting Assistant Administrator to John Hall, H&A. RE: Response to H&A May 4, 2012 Letter. September 27, 2012.
3	Letter submitted on FOIA online system. John Hall, H&A to EPA National Freedom of Information Officer. RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter. October 4, 2012.
4	Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000197 Submitted. October 5, 2012.
5	Letter (1 of 8) submitted on FOIA online system. John Hall, H&A to EPA National Freedom of Information Office. RE: Freedom of Information act Request for Records Associated with EPA's Response to the Great Bay Coalition's Scientific Misconduct Letter. October 22, 2012.
6	Letter (2 of 8) submitted on FOIA online system. John Hall, H&A to EPA National Freedom of Information Office. RE: Freedom of Information act Request for Records Associated with EPA's Response to the Great Bay Coalition's Scientific Misconduct Letter. October 22, 2012.
7	Letter (3 of 8) submitted on FOIA online system. John Hall, H&A to EPA National Freedom of Information Office. RE: Freedom of Information act Request for Records Associated with EPA's Response to the Great Bay Coalition's Scientific Misconduct Letter. October 22, 2012.
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- 10 Letter (6 of 8) submitted on FOIA online system. John Hall, H&A to EPA National Freedom of Information Office. RE: Freedom of Information act Request for Records Associated with EPA's Response to the Great Bay Coalition's Scientific Misconduct Letter. October 22, 2012.
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- 12 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000711 Submitted. October 22, 2012.
- 13 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000712 Submitted. October 22, 2012.
- 14 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000713 Submitted. October 22, 2012.
- 15 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000714 Submitted. October 22, 2012.
- 16 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000715 Submitted. October 22, 2012.
- 17 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000716 Submitted. October 22, 2012.
- 18 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000717 Submitted. October 22, 2012.
- 19 Letter (8 of 8) submitted on FOIA online system. John Hall, H&A to EPA National Freedom of Information Office. RE: Freedom of Information act Request for Records Associated with EPA's Response to the Great Bay Coalition's Scientific Misconduct Letter. October 22, 2012.
- 20 Email. FOIA online system to John Hall, H&A. RE: FOIA Request EPA-HQ-2013-000723 Submitted. October 22, 2012.
- 21 Email. Ross Brennan, EPA to Keisha Sedlacek, H&A. Re: EPA Office of Water Response to Great Bay FOIA Requests. November 30, 2012.

- 22 Email. Keisha Sedlacek, H&A to National Freedom of Information Officer. Re: Appeal of FOIA Requests EPA-HQ-2013-00197, EPA-HQ-2013-00711, EPA-HQ-2013-00712, EPA-HQ-2013-00713, EPA-HQ-2013-00714, EPA-HQ-2013-00715, EPA-HQ-2013-00716, EPA-HQ-2013-00717, EPA-HQ-2013-00723. December 20, 2012.
- 23 Letter. Barbara Spruce, EPA General Law Office to Keisha Sedlacek, H&A. RE: Freedom of Information Act Request. January 3, 2013.
- 24 Letter. Cynthia Anderson, EPA General Law Office to Keisha Sedlacek, H&A. RE: Freedom of Information Act Appeals of 18 FOIA requests to EPA Region 1 and from 9 FOIA requests to EPA HQ. January 17, 2013.
- 25 Letter. Keisha Sedlacek, H&A to Cynthia Anderson, EPA General Law Office. RE: Freedom of Information Act Appeals for 18 FOIA requests to EPA Region 1 and from 9 FOIA requests to EPA Headquarters. January 28, 2013.
- 26 Email. Cindy Anderson, EPA to Keisha Sedlacek, H&A. Re: FOIA Appeal Determination. February 15, 2013.

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May 4, 2012

VIA FEDERAL EXPRESS AND E-MAIL

Lisa Jackson, Administrator
Arthur A. Elkins, Jr., Inspector General
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: Great Bay Nutrient Criteria and Permit Development - Documentation of Apparent Scientific Misconduct and Agency Bias; Request for Transfer of Matter to Independent Panel of Experts for Review

Dear Administrator Jackson and Inspector General Elkins:

This correspondence is submitted on behalf of the Great Bay Municipal Coalition, which is comprised of the cities of Dover, Exeter, Newmarket, Portsmouth, and Rochester, NH. In recent months, EPA Region I has issued three draft NPDES permits for Exeter, Newmarket, and Dover that seek to impose a 3 mg/l total nitrogen (TN) effluent limit based on a draft numeric TN water quality criterion of 0.3 mg/l that has never been formally adopted by the state of New Hampshire or approved by EPA. These severe effluent limits and related stormwater reduction requirements are expected to cost the regulated communities in the watershed more than *one billion dollars* in additional capital and operating costs. The affected communities have repeatedly provided Region I with detailed analyses of the relevant Great Bay water quality data and studies conducted by independent researchers that show there are fundamental errors underlying the Region's mandates. The same concerns regarding oversimplified "stressor-response" analyses were highlighted by EPA's Science Advisory Board (SAB) in April 2010 and by an internal EPA Region I assessment in September 2010. Moreover, an independent, federally funded Technical Advisory Committee (TAC) for the Great Bay Estuary had also identified many of the same errors and deficiencies in 2008. Nonetheless, Region I has ignored all of these findings.

It is now apparent that serious regulatory violations, bias, and scientific misconduct underlie the Region's actions. The history regarding this matter is summarized on the attached timeline (Attachment A) and discussed in greater detail below for your consideration. For the reasons detailed herein, in accordance with the *EPA Scientific Integrity Policy* and the *Federal Policy on Research Misconduct*, the Coalition requests that (1) the review of Great Bay water quality criteria compliance and permitting be

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withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and that (2) the Region's actions leading to this request be investigated by the Office of Inspector General.

Background on Great Bay Estuary Impairment Evaluation

The following provides a brief synopsis of key scientific and regulatory issues affecting Region I's decision to impose "limits of technology" TN regulation mandates on municipal dischargers to Great Bay.

**1. Technical Advisory Committee (2005 – 2008) Concludes
TN/Transparency is Not the Cause of Eelgrass Declines in the Great Bay
Estuary**

The New Hampshire Estuaries Project (NHEP) (a federally-funded state project) formed a Technical Advisory Committee (TAC) in September 2005 to address the development of appropriate numeric water quality standards for the Estuary. The TAC members included EPA Region I, New Hampshire Department of Environmental Services (DES), University of New Hampshire (UNH) professors, municipal representatives, the Conservation Law Foundation (CLF), and a number of environmental consultants. Detailed site-specific research was conducted on the factors influencing the ecology of the Estuary and in particular the effect of nutrient concentrations on both the tidal rivers and Great Bay. Over the course of several meetings from 2006 to 2008, the TAC evaluated the results of these detailed studies, reaching the following scientific consensus:

- (1) The classic model of eelgrass loss due to TN-induced transparency decrease is inapplicable to Great Bay because transparency reduction was not the cause of the eelgrass losses and there is minimal phytoplankton growth in Bay and Piscataqua River due to physical characteristics of those waters;
- (2) Increasing total inorganic nitrogen (TIN) levels since the 1980s did not significantly increase algal blooms;
- (3) The main factor controlling transparency in Great Bay [and tidal rivers] is color and turbidity from the tidal rivers (algal levels in the Bay are low and only account for 8% of the light extinction in Bay waters);
- (4) Using data from other estuaries (i.e., Chesapeake Bay) to set Great Bay standards is not appropriate due to significant physical differences (eelgrass in Great Bay apparently tolerate higher TN loadings than other estuaries due to short retention times);
- (5) It should not be presumed that TN is the cause of eelgrass losses; analyses that combine data from different areas of the Estuary to justify a TN/transparency connection do not prove causation and may be misleading; and
- (6) DES should not claim eelgrass impairments exist in the tidal rivers (e.g., Squamscott River) if the area in question is no longer suitable for eelgrass growth [several tidal rivers exhibit naturally low transparency].

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See Ex. 1 – TAC Meeting minutes, at Meeting Minutes dated June 10, 2008, and November 17, 2008.

Subsequent to the TAC findings, DES prepared its Methodology and Assessment Results related to Eelgrass and Nitrogen in the Great Bay Estuary for Compliance with Water Quality Standards for the New Hampshire 2008 Section 303(d) List (August 11, 2008). *See* Ex. 2 - Methodology and Assessment Results related to Eelgrass and Nitrogen in the Great Bay Estuary for Compliance with Water Quality Standards for the New Hampshire 2008 Section 303(d) List (August 11, 2008). That document provides a detailed history of eelgrass declines unrelated to nutrient levels occurring in the Estuary. The main factor causing periodic eelgrass losses was noted to be a “wasting disease” that has decimated eelgrass populations around the globe. Consistent with the TAC findings, the Section 303(d) assessment concluded that eelgrass-related impairment listings for nutrients was not justified in Great Bay, Little Bay, the Upper and Lower Piscataqua River, or in Portsmouth Harbor and Little Harbor.

2. Region I Initiative to Develop TN Criteria and Generate TN-induced Eelgrass Impairment Designations (October 2008 – 2010)

In October 2008, subsequent to the TAC findings and DES completion of the 2008 impairment listings, CLF wrote a letter to Region I insisting that more restrictive impairment designations were needed for the Estuary. CLF claimed that TN should be designated the cause of eelgrass loss throughout the Estuary because TN *can* cause loss in *some* situations and, therefore, must be regulated. *See* Ex. 3 – October 6, 2008, CLF letter to EPA Region I. This position was contrary to the TAC technical conclusions and was not based on any new data or revised scientific analysis of the available information. Region I staff favored CLF’s position and pressured DES to further change impairment designations and conclusions to reflect this position. *See* Ex. 4 – L. Hamjian, EPA Region I, letter to H. Stewart, NHDES, dated September 30, 2009, at 3. Region I’s internal correspondence in November 2008 confirms that the Region knew that no cause and effect relationship between TN and eelgrass loss existed but, despite this knowledge, still pursued the development of stringent TN criteria for Great Bay to “restore” eelgrass populations. *See* Ex. 5 – M. Liebman, EPA Region I, email dated November 21, 2008. Federally-funded studies contemporaneously completed by Dr. Fred Short,¹ a local eelgrass expert, confirmed that eelgrass losses were occurring in areas with both elevated and low TN and transparency levels.² Moreover, Great Bay, which had the highest eelgrass populations, had much higher TN levels and lower transparency than Little Bay and the Piscataqua River, where eelgrass failed to recover after the last bout of wasting disease in 1988. Plainly, from these studies, there was no indication that TN or transparency levels were controlling eelgrass recovery anywhere in the Great Bay system.

¹ Dr. Short is a UNH professor whose supposed research Region I is relying upon to support the need for TN criteria to protect eelgrass in Great Bay.

² *See* Beem, N. T., and F. T. Short 2009, Subtidal eelgrass declines in the Great Bay Estuary, New Hampshire and Maine, USA. *Estuaries and Coasts*, 32: 202-205.

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Nonetheless, from November 2008 through June 2009, EPA Region I supported the development of a new TN criteria approach based on transparency impacts (*the precise impact the TAC concluded did not exist*). By June 2009, the state began to implement Region I's recommended approach by developing draft TN numeric criteria for the Great Bay Estuary³ and revising the impairment assessment for Great Bay using the June 2009 Criteria.⁴ The Coalition Members did not find out about the revised impairment designations until after DES in August 2009 submitted a radically revised, final document to Region I, who promptly approved it in September 2009.⁵ See Ex. 4 – L. Hamjian, EPA Region I, letter to H. Stewart, NHDES, dated September 30, 2009. A review of the impairment listing methodology and the draft criterion indicated that the foregoing represented a 180 degree shift from the TAC findings and the prior publically-released documents. All subsequent attempts by the regulated community to have an independent review of the revised scientific positions have been ignored by the regulatory authorities. Region I subsequently informed DES that it “must” apply the new draft TN criteria wherever eelgrass historically existed. See Ex. 6 – S. Perkins, EPA Region I, letter to H. Stewart, NHDES, dated December 9, 2009. By February 2010, Region I had begun internal discussions on the effluent limitation potentially applicable to Great Bay communities. See Ex. 7 – S. Silva, EPA Region I, email to C. Deloi, EPA Region I, dated Feb. 11, 2010. Region I acknowledged that a 5 mg/l TN limitation would be acceptable, but the Region would only propose this limitation “with CLF’s agreement not to appeal.” *Id.* at 1. Absent this agreement, Region I would impose a 3 mg/l TN limitation. *Id.* at 1.

In March 2010, without notice to the public, Region I initiated an internal “peer review” of the 2009 numeric criteria under EPA’s N-STEPS program to deflect mounting criticism. See Ex. 8 – E. Tupper Kinder letters to EPA Region I dated April 9, 2010, and May 12, 2010 (with attached report). However, repeated Coalition requests to have public involvement in that process and a detailed scientific inquiry were rejected by the Region. The comments submitted by the Coalition to DES were never submitted to the peer reviewers for their consideration. Region I then issued its “peer review” document in June 2010, claiming that the review supported the revised June 2009 Criteria, despite the fact that critical issues raised by the Coalition were never evaluated. At nearly the same time, EPA’s Science Advisory Board (SAB) was peer reviewing a draft guidance document on the use of “stressor-response” analysis to derive numeric nutrient criteria for EPA Headquarters. The SAB released its final report in April 2010, and EPA finalized

³ See Numeric Nutrient Criteria for the Great Bay Estuary, NHDES June 2009 (hereinafter “June 2009 Criteria”) (which claimed that the numeric water quality criteria for TN in the Great Bay Estuary should be set at 0.3 mg/l to improve transparency and restore eelgrass populations).

⁴ See revised 303(d) listing for Great Bay – 2009.

⁵ The Region’s approval letter noted that the Region had worked closely with DES in developing the eelgrass/transparency-based TN numeric criteria that were used to declare Bay and tidal river areas as eelgrass impaired due to nutrients.

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its guidance in November 2010.⁶ The SAB report and the EPA guidance document are relevant to this matter because the draft numeric TN criteria presented in the June 2009 Criteria were based on a similar stressor-response analysis. Both the SAB Report and the final Guidance confirm that the use of stressor-response analyses are only scientifically defensible when cause and effect has been demonstrated and significant confounding factors influencing the stressor-response relationship have been accounted for in the analysis. *Id.* at 6. The June 2009 Criteria did not address either of these fundamental considerations, and contemporaneous EPA Region I emails derided the need to make such a demonstration. *See* Ex. 9 – EPA Region I emails regarding cause and effect, dated July-August 2010. Unbeknownst to the Coalition, Region I subsequently conducted a review of the 2009 criteria document in light of the Coalition’s technical comments and EPA’s SAB Report. *See* Ex. 10 – M. Liebman, EPA Region I, document titled “Review of: Numeric Nutrient Criteria for the Great Bay Estuary, in light of comments made by John C. Hall and Thomas Gallagher (2010)” dated September 1, 2010.⁷ This internal analysis confirmed the Coalition’s observation that numerous scientific deficiencies underlie the June 2009 Criteria document, including the following:

Conceptual models

“They rely on literature and only sparingly rely on established results from the estuary itself. It would be better to document some of the connections within the estuary itself.” [Ex. 10 at 2.]

Algal blooms

“The correlations between total nitrogen and 90th percentile chlorophyll *a* levels by assessment unit or by trend monitoring station are strong, but does this discount other factors, such as salinity and wind, or stratification? ... Is there supporting information to suggest that the chlorophyll *a* levels observed in the estuary are consistent with a response from the measured or estimated nutrient loading to the estuary?” [Ex. 10 at 2.]

Macroalgae

“The conceptual model is that as TN increases, eelgrass is replaced by macroalgae, but the actual mechanism is not sufficiently explained. Are macroalgae better able to utilize nutrients in enriched conditions and thus outcompete eelgrass? Are there any literature or mesocosm experiments in Great Bay that document this? There is literature from Waquoit Bay, but is this area similar enough to Great Bay to explain the process?” [Ex. 10 at 3.]

“Although there does seem to be supporting evidence of this replacement based on one aerial surveys, there is insufficient documentation of the loss of eelgrass and coincident replacement by macroalgae.” [Ex. 10 at 3.]

⁶ *See* “Using Stressor-response Relationships to Derive Numeric Nutrient Criteria.” USEPA, EPA-820-S-10-001, November 2010.

⁷ This document was provided to the Coalition by Region I in response to FOIA Request No. 01-FOI-00148-11.

Exhibit 1**HALL & ASSOCIATES***Light extinction*

“On page 15, the authors state that eelgrass is sensitive to water clarity without citing the specific experimental evidence in the Great Bay estuary. ... For example, do the mesocosm experiments show the effects of increasing nitrogen enrichment on eelgrass in terms of light attenuation, or lengthening of blades, or loss of carbohydrate stores, or epiphytic growth? Are these loadings similar to loadings into Great Bay and are the responses in Great Bay expected based on the mesocosm experiments?” [Ex. 10 at 3.]

Confounding factors*Chlorophyll a*

“The authors did not sufficiently evaluate whether salinity is more important than nitrogen in controlling phytoplankton abundance. ... Does chlorophyll *a* track salinity as well? ... This would provide supporting material to document that the chlorophyll *a* response is controlled primarily by nutrients, rather than habitat changes (i.e. low salinity vs. higher salinity zones).” [Ex. 10 at 3-4.]

Benthic indicators

“The authors state (on page 40) that organic matter comes from primary producers, but they don't evaluate the effect of organic matter from terrestrial sources, especially in the upper parts of the estuary. On page 41, they state that the regressions prove that total organic carbon in sediments is associated with nitrogen and chlorophyll *a* concentrations in the water column, but they don't say that they are caused by them. I suspect that terrestrial sources from nonpoint and sewage treatment effluent are more important than autotrophic sources of organic matter.” [Ex. 10 at 4.]

Dissolved oxygen

“The dissolved oxygen section on page 45 presents an incomplete conceptual model, because they do not address other sources of organic matter, including sewage treatment effluent, and terrestrial runoff. ... In addition, the relationships could be confounded by salinity stratification, or flushing, rather than nitrogen. The sonde data sources for low dissolved oxygen are all in the tributaries, which are really different than the Great Bay areas, and therefore the low dissolved oxygen could be partly related to poor circulation and salinity wedges and other sources of organic matter (e.g. terrestrial organic matter). Additional information should be presented to discount these other factors.” [Ex. 10 at 4.]

Light extinction

“On page 63 and in Figure 34 the authors suggest that the particulate organic matter in the water column expressed as turbidity is caused by nitrogen and that this particulate matter is autochthonous (i.e. derived from phytoplankton). But, there should be supplemental evidence that discounts the possibility that this organic matter is related to the salinity gradient and is from upstream sources of terrestrial runoff.” [Ex. 10 at 5.]

Despite the obvious, significant technical deficiencies and failure to provide analyses consistent with the SAB recommendations, Region I continued to claim that the June 2009 Criteria were scientifically defensible.

Exhibit 1**HALL & ASSOCIATES****3. Coalition Members Meet with DES to Review Applicable Scientific Information and Develop a Memorandum of Agreement (2011)**

Once the Coalition communities obtained the amended 303(d) listing and learned of Region I's decision to limit the "peer review" of the June 2009 Criteria analysis, they prepared and submitted site-specific data and analyses showing that elevated levels of TN could not possibly have caused eelgrass losses in the Estuary as a result of phytoplankton-induced light extinction and that the water quality criteria of 0.3 mg/l TN was unsupported by any of the site-specific data. In particular, the Coalition documented that there was no information showing that either transparency had significantly *decreased* or algal growth had significantly *increased* in the Estuary from 1990 to 2009. Therefore, it was indefensible to assert TN-induced transparency changes caused the eelgrass losses.

Several meetings were held with DES technical staff to review the information. By April 2011, in response to the presentation of these site-specific data analyses, DES agreed that there remained a significant degree of uncertainty with regard to the draft numeric TN standards and signed a Memorandum of Agreement (MOA) with the Coalition communities designed to investigate and resolve key technical issues. *See* Ex. 11 - MOA. The parties to the MOA agreed that appropriate TN criteria for the Estuary would need to be set for each tidal river on a site-specific basis. Under the MOA, open technical meetings were held with UNH researchers, DES and Region I. Those meetings culminated in a consensus that the impairment mechanism attributed to the loss of eelgrass in the June 2009 Criteria – loss of light transparency due to increased phytoplankton growth – *did not occur and was not the cause of eelgrass changes* in Great Bay. *See* Ex. 12 – MOA Meeting Minutes.

4. EPA Region I Ignores Terms of MOA and Drafts NPDES Permits with Stringent TN Limits (2011)

Throughout 2011 and 2012, the communities repeatedly presented data and analyses to Region I confirming that transparency reductions associated with TN *cannot* be the cause of the eelgrass declines and that TN-induced impacts on transparency (i.e., increased algal growth) are documented to be negligible. *See, e.g.,* Exs. 13, 14, and 15 – Transparency-phytoplankton relationship charts for the Squamscott, Lamprey, and Piscataqua Rivers. The Coalition also reconfirmed that the transparency in the tidal rivers was quite low due to natural factors (color, turbidity, etc.) and, due to these factors, apparently could no longer support eelgrass growth based on the degree of light penetration presumed by DES to be necessary to support such growth. *See id.* Despite the numerous, unrefuted studies confirming there is no "eelgrass-TN-transparency" paradigm controlling eelgrass populations in Great Bay or the tidal rivers, Region I continued to ignore the information submitted by the Coalition communities, without comment, and proceeded to issue three draft NPDES permits (Exeter, Newmarket, and Dover) that established limits-of-technology TN requirements based on the draft TN criteria of 0.3 mg/l from the discredited June 2009 Criteria. In response to comments made on the draft permits, Region I subsequently claimed that its TN-transparency-

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eelgrass loss position was based on the scientific findings of Dr. Fred Short. *See* EPA Region I Response to FOIA Request No. 01-FOI-00053-12.⁸ Because of Region I's reliance on Dr. Short's research claims, the Coalition requested that Dr. Short produce the research he claimed demonstrated that TN levels caused increased algal growth, reduced transparency, and the loss of eelgrass populations throughout the Estuary. *See* Ex. 17 – F. Short email to EPA Region I dated December 22, 2011; Ex. 18 – Correspondence from Coalition to F. Short, dated January 23, 2012, and February 9, 2012. To date, Dr. Short has been unable to produce any such information, and the Region has also failed to produce any such information.

5. Historical Summary

Based on these interactions and documented events it is apparent that Region I has purposefully ignored the valid scientific findings of the TAC and has taken, without support, a position that stringent TN limitations are required to improve transparency and restore eelgrass populations in Great Bay. Furthermore, although critical scientific deficiencies were confirmed by Region I, the Region has undertaken repeated efforts to thwart a comprehensive evaluation of the underlying science and has rendered its decision to impose stringent TN limitations based on administrative fiat, which it has no intention of altering regardless of whatever information is presented.

Basis for Requesting Inspector General Scientific Misconduct and/or Lack of Impartiality Investigation and Transfer of Matter from EPA Region I Due to Documented Bias

EPA's *Scientific Integrity Policy* and the *Federal Policy on Research Misconduct* specify the requirements for appropriate scientific and research conduct and specify the elements that constitute scientific misconduct. As further discussed below, Region I (1) based its regulatory assertions on the manipulation or misuse of data and analyses to support its desired outcome, as opposed to sound science; (2) refused and/or was unable to produce valid documentation to support its position; (3) prevented public involvement in its peer review process; and (4) has consistently demonstrated a lack of impartiality regarding the matter. The Region I's actions plainly violate these policies that are intended to ensure that sound science is used in the regulatory decision-making process. As such, these violations justify withdrawal of the matter from Region I and further investigation.

⁸ As part of the publication of the draft NPDES permits, the Region also issued multipage "fact sheets" to support the application of stringent TN limitations for Coalition members. In order to obtain the underlying basis and support for Region I's various scientific assertions, the Coalition submitted a series of Freedom of Information Act (FOIA) requests to Region I. Upon review, Region I's FOIA responses confirmed that Region I's basis for imposing the new TN restrictions relied heavily on the claims of Dr. Fred Short. *See* Ex. 16 – EPA Region I Phone Logs of Conversations with F. Short, dated November 14, 2011, and November 18, 2011. The Region also made numerous other unsupported claims (i.e., organic nitrogen is rapidly converted to inorganic nitrogen within Great Bay justifying TN control; excessive nitrate levels are harming eelgrass, eelgrass restoration in the tidal rivers is dependent on TN reduction). The FOIA responses further confirmed that Region I did not have any other Great Bay studies or analyses supporting these claims.

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HALL & ASSOCIATES**1. EPA Region I's Stance is Based on the Improper Use of Data and Analyses to Support a Desired Outcome and is Not Grounded in Sound Science**

Based on these interactions and documented events, it is apparent that EPA Region I has (1) purposefully ignored the valid scientific findings of the TAC that a "cause and effect" relationship between eelgrass loss, transparency, and TN did not exist, (2) ignored its own analyses identifying numerous significant scientific deficiencies regarding the June 2009 Criteria, and (3) adopted a contrary position that stringent TN limitations are required to improve transparency and thereby restore eelgrass populations in Great Bay. Additionally Region I has intentionally, knowingly, or recklessly adopted the scientific claims of a UNH researcher that it knows are factually unsupported, in order to justify the adoption of stringent TN criteria for the Great Bay Estuary. Individually and collectively, these actions constitute research misconduct. The *Federal Policy on Research Misconduct* states:

"[r]esearch misconduct is defined as fabrication, falsification, or plagiarism in proposing, performing or reviewing research, or in reporting research results [65 Fed. Reg. 76262 at I], or ordering, advising or suggesting that subordinates engage in research misconduct." 65 Fed. Reg. 76262 at I n.2. "Fabrication is making up data or results and recording or reporting them." 65 Fed. Reg. 76262 at I. "Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record." 65 Fed. Reg. 76262 at I. The federal policy further states that a finding of research misconduct requires that "[t]here be a significant departure from accepted practice of the relevant research community;" "[t]he misconduct be committed intentionally, or knowingly, or recklessly;" and "[t]he allegation be proven by a preponderance of evidence." 65 Fed. Reg. 76262 at II.

In this case, "[t]he significant departure from accepted practice of the relevant research community" began with the lack of any objective data regarding TN levels causing adverse transparency impacts on eelgrass in the Estuary and developed into the manipulation of real data to produce a false conclusion. Neither Region I, Dr. Short, nor DES can claim ignorance of the lack of scientific justification for the proposed transparency-based TN restrictions, as they were present at the TAC meetings wherein it was expressly concluded that increased TN concentrations *had not caused increased algal growth causing significantly lower transparency levels*. In contradiction to their later research claims, the federal research reviewed by the TAC expressly determined that a significant relationship between TN and transparency did not exist. The TAC minutes confirmed that the changing physical factors unrelated to TN (color, dilution (salinity), and turbidity) actually controlled the transparency existing at those different sites. See Ex. 1 – TAC Meeting Minutes, at Meeting Minutes dated December 7, 2007.

When this legitimate research (the conclusions of which were expressly agreed upon in formal State/Federal TAC meetings) produced findings that did not justify an imposition of stringent TN criteria, Region I requested that DES create alternative findings (numeric water quality criteria) specifically to back up their desire for stringent TN regulation and to supplant the properly documented research conclusions reached by the TAC. DES employee Philip Trowbridge (also a TAC member) then created a new "stressor-

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response” analysis designed to support the falsified claim that TN had induced algal growth increases causing major changes in transparency in both the Bay and tidal rivers.⁹ When these new DES analyses (later comprising the June 2009 Criteria) were presented to the TAC in June and November 2008, the TAC advised that the approach did not demonstrate cause and effect and should receive an independent peer review because of the unconventional methods employed. *See id.*, at Meeting Minutes dated June 10, 2008, and November 17, 2008. This independent peer review never occurred. Likewise, Region I internal correspondence demonstrates that it knew these analyses did not represent a “cause and effect” relationship, but nonetheless promoted the methods as scientifically defensible. *See* Ex. 9 – EPA Region I emails regarding cause and effect, dated July-August 2010. As such, the entire TN/transparency analysis used to justify the stringent TN criteria was a gross scientific misrepresentation.

Moreover, the Coalition noted that the simplified “stressor-response” procedures used to develop the draft TN criteria had been specifically rejected by EPA’s Science Advisory Board as not scientifically defensible in April 2010.¹⁰ In evaluating the Coalition’s comments, Region I itself noted numerous “confounding variables” were not addressed in the development of the June 2009 Criteria. *See* Ex. 10 - M. Liebman, EPA Region I, document titled “Review of: Numeric Nutrient Criteria for the Great Bay Estuary, in light of comments made by John C. Hall and Thomas Gallagher (2010)” dated September 1, 2010. In particular, the Region noted a failure to confirm that salinity or upstream runoff did not control transparency/dissolved oxygen (DO) and a failure to confirm that algal growth actually increased due to higher TN loadings. *Id.* at 3-5. Nonetheless, Region I continued to assert that the June 2009 Criteria may be used to justify the application of stringent TN water quality criteria requiring effluent limits of 3 mg/l TN asserting that the “weight of evidence” justifies such findings.

Finally, all of these issues and fundamental scientific errors were again brought to the Region’s attention at the Exeter, NH, NPDES draft permit modification hearing (NPDES Permit No. NH0100871) in June 2011. As demonstrated in the Coalition’s reports,¹¹ which were submitted to Region I and Dr. Short, and the Coalition’s response to Region I’s request for comments regarding the Exeter draft permit modification, the development of the June 2009 Criteria by DES analysis violated fundamental scientific principles

⁹ This analysis plotted data from dramatically different physical settings (river, bay, ocean) to conclude that TN “caused” the changes in transparency at these different locations, when in fact the data simply showed the inherent principle that TN levels decrease and transparency levels increase from the head of the Estuary to its mouth. *See* Ex. 19 - Relationship between Light Attenuation Coefficient and TN at Trend Stations (NHDES 2009).

¹⁰ In 2010, EPA published guidance on the use of empirical approaches such as stressor response analysis to develop numeric nutrient criteria. (*See* EPA-820-S-10-001.) This guidance was subject to Science Advisory Board review prior to publication. The guidance affirms that stressor response analysis is a valid method *only after a cause-and-effect relationship has been established and confounding factors have been accounted for*. The June 2009 Criteria analysis did not consider either of these critical factors.

¹¹ Ex. 18 at Attachments to January 23, 2012, Coalition Correspondence to F. Short: HydroQual Reports dated June 14, 2010, and January 10, 2011.

Exhibit 1**HALL & ASSOCIATES**

governing water quality impact assessment and was specifically at odds with the TAC-reviewed site-specific information collected for Great Bay. Most notably, the Coalition pointed out that data were combined from dramatically different hydrologic and physical settings to mask the effect of other controlling parameters (e.g., turbidity, dilution (salinity), and color) and to claim that changing TN levels were the sole cause of changing transparency levels. *See id.* The Coalition also provided data plots for the Squamscott River confirming that algal growth was *not* the cause of low transparency in the tidal river. *See* Ex. 13 – Transparency-phytoplankton relationship chart for the Squamscott River. This information was ignored as well, and the Region continued to issue draft permits with identical TN effluent limitations under the claim that the June 2009 Criteria were properly conducted and determined by Region I to be “scientifically defensible.”

To bolster its untenable position, Region I later claimed that Dr. Short had completed research for the Estuary that confirmed reduced transparency caused system-wide eelgrass losses. *See* EPA Region I Response to FOIA Request No. 01-FOI-00053-12.¹² That assertion was yet another serious misrepresentation. In fact, the prior TAC meetings that evaluated the proper water quality requirements for Great Bay *expressly concluded that this transparency mechanism for eelgrass loss DID NOT occur in Great Bay.* *See* Ex. 1 – TAC Meeting Minutes, at Meeting Minutes dated December 7, 2007. Federally-funded research completed by Dr. J. Ru Morrison (UNH Professor) had confirmed that transparency in Great Bay was negligibly impacted by algal growth and that color (originating naturally from the tidal rivers) controlled light penetration in those waters.¹³ If Dr. Short actually had completed research relevant to that issue, it would have been presented to the TAC, of which he was a member. In reality, Dr. Short’s research never looked at whether light transmission in the water column in the Estuary had changed over time due to increased TN and algal growth.

¹² Region I’s FOIA responses confirmed that Region I was relying on the claims of Dr. Fred Short. *See* Ex. 16 – EPA Region I Phone Logs of Conversations with F. Short, dated November 14, 2011, and November 18, 2011. We understand that Dr. Short received extensive federal funding for eelgrass research in Great Bay and the Piscataqua River. Based on this federally-funded research that was supposedly conducted in the Estuary, Dr. Short made a number of very specific scientific claims regarding the factors that caused eelgrass losses in the Bay and tidal rivers. These unsupported claims were used by the Region and DES as the primary basis to link TN to eelgrass loss and to support imposition of a 0.3 mg/l TN water quality standard to improve transparency in the tidal waters of the Bay and to further impose 3 mg/l TN effluent limits to achieve that standard. Specifically, Dr. Short asserted that his research confirmed that increasing TN levels caused increased algal growth, significantly reducing water column transparency causing the demise of eelgrass throughout the system. However, the available records show that he never conducted research that was designed to demonstrate that TN-induced transparency reduction caused the eelgrass losses in Great Bay.

¹³ *See* Morrison, J. Ru, et al. *Using Moored Arrays and Hyperspectral Aerial Imaging to Develop Nutrient Criteria for New Hampshire’s Estuaries – A Final Report to The New Hampshire Estuaries Project* (September 30, 2008). Available at: http://com.unh.edu/sites/default/files/publications/Morrison_2010_Report_Using_Moored_Arrays_and_Hyperspectral_Aerial_Imagery_to_Develop_Nutrient_Criteria_NH_Estuaries.pdf.

Exhibit 1**HALL & ASSOCIATES**

Despite repeated requests, no research or studies supporting Dr. Short's claims have been provided to the Coalition. *See* Ex. 18 – Correspondence from Coalition to F. Short, dated January 23, 2012, and February 9, 2012. Region I's continuing efforts to rely on a position it knows, or should know, is unsupported also violates EPA's Research Misconduct guidelines. Based on all of the records and documentation available to the Coalition, it is clear that the technical basis used to create the TN standard was, at best, recklessly prepared or, at worst, intentionally falsified. As the Region was directly involved in promoting these analyses based on research claims regarding Great Bay data it knew were unsupported, Region I has committed science misconduct.

2. Refusal to Allow an Independent Peer Review and Public Involvement in the Process

Region I has undertaken repeated efforts to prevent public input into an objective investigation of the underlying science. These activities confirm that EPA Region I has rendered its biased decision to impose stringent TN limitations based on administrative fiat, which it has no intention of altering regardless of whatever information is presented. Despite the TAC's open evaluation, with the participation of all interested stakeholders, of the detailed studies conducted on Great Bay and its subsequent conclusion that TN should not be designated the cause of eelgrass loss, CLF wrote a letter to Region I in October 2008 claiming that TN should be designated the cause of eelgrass loss in the Bay because TN *can* cause loss in *some* situations and, therefore, must be regulated. *See* Ex. 3 – October 6, 2008, CLF letter to EPA Region I. Following the CLF letter, Region I embarked on a mission to induce DES to change impairment designations and conclusions to reflect that TN was the cause of eelgrass loss. *See* Ex. 5 – M. Liebman, EPA Region I, email dated November 21, 2008. Region I's internal correspondence in November 2008 confirms that that no cause and effect relationship between TN and eelgrass loss existed in Great Bay but, despite this knowledge, Region I still pursued the development of stringent TN criteria for Great Bay. *See id.* Region I's letter approving the radically revised impairment listings for the Estuary acknowledged Region I's major role in developing the new TN criteria and in altering the original DES position that presented to the public. Ex. 4 – L. Hamjian, EPA Region I, letter to H. Stewart, NHDES, dated September 30, 2009.

By June 2009, the state had begun to implement Region I's recommended approach by finalizing the TN criteria and revising the impairment assessments for Great Bay. Region I promoted the state's immediate use of the unadopted numeric criteria, by now calling them a "narrative criteria interpretation."¹⁴ Without further public review, DES submitted the radically revised impairment listings (based on the new, unadopted numeric TN criteria) in August 2009. Region I promptly approved the revised listings and impairment causes in September 2009. Both Region I and DES ignored all attempts by

¹⁴ It should be noted that EPA itself, under the direction of the 11th Circuit Court of Appeals in *Florida Public Interest Group v. EPA*, 386 F.3d 1070 (11th Cir. 2004), developed the controlling analysis of what factors determine when new water quality standards have been developed. The June 2009 Criteria are clearly new water quality standards under this test. New water quality standards can only be adopted through formal rulemaking, which has never been conducted.

Exhibit 1**HALL & ASSOCIATES**

the regulated community to have an independent review of the revised scientific positions. *See* Ex. 8 – E. Tupper Kinder letters to EPA Region I dated April 9, 2010, and May 12, 2010 (with attached report). To provide some semblance of reliability and to deflect mounting criticism, the Region set up an extremely limited internal peer review in March 2010 with selected EPA contractors. All Coalition requests to have public involvement in that process and to ensure that appropriate technical questions prepared by the Coalition were addressed through the peer review process were rejected by the Region. The questions posed to the experts selected by Region I were designed to avoid any serious investigation into the lack of demonstrated cause and effect relationships. None of the earlier TAC recommendations or analyses was provided to the peer reviewers. The Coalition members strongly protested the scope of the questions presented and asked for a more public process to occur. *See* Ex. 8 – E. Tupper Kinder letters to EPA Region I dated April 9, 2010, and May 12, 2010 (with attached report). Region I refused to allow the peer review to address the scientific questions raised by the Coalition – in particular whether the analysis framework was consistent with EPA’s Science Advisory Board recommendations on use of simplified regressions to establish “stressor-response” nutrient criteria for complex waters. No public input on this “peer review” was allowed.

Consequently, Region I’s “independent peer review” document, issued in June 2010, amounted to little more than a contrived approval derived by withholding relevant scientific information and public input from the experts selected by Region I for the review. Subsequent responses to FOIA requests and permit “fact sheets” asserted that this “peer review” justified the Region’s conclusion that the new restrictive TN criteria were “scientifically defensible.” As noted earlier, all subsequent data and analyses submitted by the Coalition and its experts, confirming the TN-transparency connection did not exist, were ignored by Region I. This occurred even though the Region knew that the Coalition’s objections were well-founded. *See* Ex. 10 - M. Liebman, EPA Region I, document titled “Review of: Numeric Nutrient Criteria for the Great Bay Estuary, in light of comments made by John C. Hall and Thomas Gallagher (2010)” dated September 1, 2010. As such, Region I’s refusal to allow public participation in the internal “peer review,” was plainly an attempt to conceal the Region’s internal evaluation identifying critical deficiencies and to prevent an objective scientific assessment. In addition to violating EPA’s policies against research misconduct, these actions plainly violate EPA’s Scientific Integrity policy that “prohibits all EPA employees, including scientists, managers, and other Agency leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.” EPA Scientific Integrity Policy at IV, Section A, Part 1.

Exhibit 1**HALL & ASSOCIATES****Conclusion and Request for Action**

The *Federal Policy on Research Misconduct* states, “[i]n deciding what administrative actions are appropriate, the Agency should consider the seriousness of the misconduct, including, but not limited to, 1) the degree to which the misconduct was knowing, intentional, or reckless; 2) was an isolated event or part of a pattern; and 3) had significant impact on the research record, research subjects, other researchers, entities, or the public welfare.” 65 Fed. Reg. 76264 at V. The record is clear that Region I was determined to implement stringent transparency-based TN criteria and designate TN as the cause of eelgrass loss in the Bay. However, no objective scientific information from the Great Bay Estuary supported either action. Moreover, the Region’s decision to impose the June 2009 Criteria even after internally identifying major scientific deficiencies with the numeric criteria confirms that the Region has no intention of conducting a competent and impartial scientific assessment for Great Bay. The Region’s actions demonstrate that it is biased toward and intent on implementing a predefined regulatory agenda.

This misconduct is not an isolated event, as Region I has intentionally, knowingly, or recklessly committed violations of the *Federal Policy on Research Misconduct* and the *EPA Scientific Integrity Policy* in every step of these proceedings, including the following:

- Ignoring TAC conclusions based on federally-funded Great Bay research which confirmed that TN-induced transparency decreases did not cause the eelgrass losses;
- Promoting stringent transparency-based TN criteria, knowing that algal growth and transparency did not change over time due to TN load increases;
- Purposefully excluding the public from the peer review process and limiting the information provided to the peer reviewers;
- Continuing to support the June 2009 Criteria after internally identifying major scientific deficiencies and significant conflicts with the SAB recommendations on acceptable stressor-response-based criteria;
- Relying on the undocumented claims of a UNH researcher that the Region knew or should have known were unsupported; and
- Continuing to issue stringent NPDES permits, despite available data confirming the basis for these actions is clearly in error.

These actions have great potential to cause harm to the public welfare, as the watershed-wide costs of compliance with the excessive restrictions, if imposed, could easily exceed \$1 billion. Consequently, in accordance with applicable policies intended to ensure the integrity of scientific decision making, the Coalition requests EPA Headquarters take the

Exhibit 1

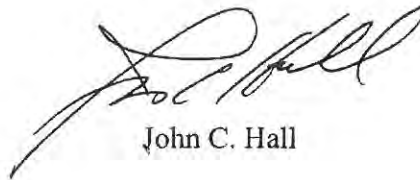
HALL & ASSOCIATES

following actions:

1. Due to the severity and quantity of violations, we request that (1) a meeting be arranged with the Administrator's office to discuss the matter and (2) further review of Great Bay Estuary matters be withdrawn from Region I and transferred to an independent panel of experts who can evaluate the scientific information that is the foundation of the Region's position.
2. We further request that Region I's actions be reviewed by the Office of Inspector General.

We look forward to the Agency's swift resolution of this matter and the approval of scientifically defensible approaches to protect the resources of Great Bay.

Sincerely,

A handwritten signature in black ink, appearing to read "J. C. Hall", is written over the typed name.

John C. Hall

Enclosures

cc: Coalition Members
Curt Spaulding, Administrator of EPA Region I
Thomas Burack, Commissioner of NH DES
Gov. John Lynch
Rep. Frank Guinta
Sen. Jeanne Shaheen
Sen. Kelly Ayotte
Rep. Bob Gibbs
White House Council on Environmental Quality

Exhibit 2

Exhibit 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 27 2012

OFFICE OF WATER

Mr. John C. Hall
Hall and Associates
Suite 701
1620 I Street, N.W.
Washington, D.C. 20006-4033

Dear Mr. Hall:

I am writing in response to your May 4, 2012, letter requesting that further review of Great Bay Estuary matters be withdrawn from the Environmental Protection Agency (EPA)'s Region 1 office and transferred to an independent panel of experts for their evaluation of the relevant scientific information.

Your letter makes a number of very serious allegations concerning the EPA Region 1 office, including that "serious regulatory violations, bias, and scientific misconduct underlie the Region's actions..." and that the Region has "intentionally, knowingly, or recklessly committed violations of the Federal Policy on Research Misconduct and the EPA Scientific Integrity Policy in every step of these proceedings..." Because of the seriousness of these allegations, the EPA's Office of Water has initiated a careful review of the issues raised in your letter.

The EPA's 2012 Science Integrity Policy indicates that, "Scientific misconduct includes fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and research activities, or in the publication or reporting of these activities; scientific misconduct does not include honest error or differences of opinion." Due to the seriousness of your integrity claim, I contacted the EPA's interim science integrity official, and he determined that your letter and its attachments do not provide a basis to conclude that the Region's actions in any way constituted scientific misconduct as defined by the EPA's Scientific Integrity Policy.

The EPA appreciates the fact that you and your clients may not agree with many of the determinations reached by the New Hampshire Department of Environmental Services (NH DES) and the EPA Region 1 office. It is, of course, not unusual for parties to disagree – and often disagree strongly – with the EPA over Agency actions that may affect them, especially when those actions rely on interpretations of legal authority and analysis of scientific data. I recognize that you are concerned that the EPA-proposed limits may result in the need for action by your clients, as well as other stakeholders, to reduce nutrient loadings to the Great Bay Estuary. Nevertheless, based on careful consideration of your letter and the documents you provided, the EPA Office of Water has not seen evidence that Region 1 has engaged in scientific misconduct, as you suggest.

Exhibit 2

2

The EPA has not made a final decision on your request for additional peer review. However, I want to clarify the scope of previous EPA peer review activities. Pursuant to a December 2009 request of the NH DES, we conducted a peer review of the State's final draft criteria document through EPA's Nutrient Scientific Technical Exchange Partnership and Support (N-STEPS) program. N-STEPS is an external, independent peer review process administered through an EPA-funded contract. The two scientists chosen for the peer review have national expertise in the field of marine eutrophication and had no involvement in the development of the NH DES criteria. Neither Region 1 nor the Office of Water had a role in selecting the reviewers. The reviewers had access to all comments provided to NH DES during the public comment period described above, including those of the affected municipalities.

It is the EPA's opinion that the reviewers and the charge questions to them were consistent with the Office of Management and Budget (OMB)'s 2004 guidance for peer review as well as Section 1.2.3 of the EPA's Peer Review Handbook (3rd edition). The purpose of the peer review was to support the state by providing advice from national experts on how to improve the technical and scientific soundness of the document as a basis for future development of numeric nutrient water quality criteria. The peer review was not intended to resolve the many complex issues concerning the development of nutrient criteria and the implementation of nutrient controls for the Great Bay.

I also recognize that you have sent the EPA several additional letters, most recently on September 7, 2012, providing information that you believe supports your concerns about the scientific basis for contemplated EPA permitting actions. Although the Office of Water has not seen any evidence of scientific misconduct, it is continuing to review your submissions and intends to provide a comprehensive response at a later date. In the interim please continue to direct your questions to my senior advisor, Ellen Gilinsky, at gilinsky.ellen@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Nancy K. Stoner', is written over a faint, circular official stamp.

Nancy K. Stoner
Acting Assistant Administrator

Exhibit 3

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 4, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

Background:

On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

In response to the Coalition's detailed allegations of misconduct, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition on September 27, 2012, stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation into the facts relied upon EPA's Office of Water and the Interim Science Integrity Official to determine any of the Coalition's allegations were, in fact, unsupported. EPA simply reaches a conclusory, final agency decision that science misconduct has not occurred. Since EPA reached a final agency decision, there should be an administrative record demonstrating that the factual statements and conclusions present in the Coalition's various correspondences on this matter were incorrect.

Request:

Please provide us with the records relied upon by the EPA's Office of Water and the Interim Science Integrity Official to determine that scientific misconduct, as alleged in the May 4, 2012, letter to the agency has not occurred. More specifically, please provide:

1. Emails or correspondence between EPA Headquarters and any outside party including, but not limited to, EPA Region I, New Hampshire Department of Environmental Services, Conservation Law Foundation, or Dr. Fred Short regarding the Coalition's allegations.
2. The administrative record, excluding emails from the Coalition or the Coalition's counsel, relied upon by EPA Headquarters in rendering the decision that no scientific misconduct has occurred in this case.
3. Any documents, developed by EPA Headquarters or its contractors, including fact sheets, internal assessments, briefing memorandums, meeting minutes, which evaluated and/or discussed whether or not EPA Region I engaged in scientific misconduct.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

cc: Great Bay Municipal Coalition

Exhibit 4

From: foia@erulemaking.net [mailto:foia@erulemaking.net]

Sent: Friday, October 05, 2012 9:38 AM

To: John Hall

Subject: FOIA Request EPA-HQ-2013-000197 Submitted

This message is to confirm your request submission to the FOIAonline application <https://foiaonline.regulations.gov:443/foia/action/public/view/request?objectId=090004d280009ca1>. Request information is as follows:

- Tracking Number: EPA-HQ-2013-000197
- Requester Name: John C. Hall
- Date Submitted: Fri Oct 05 00:00:00 EDT 2012
- Request Status: Submitted
- Description: Requesting records associated with EPA's Response to the Great Bay Coalition's Scientific Misconduct Letter

Exhibit 5

HALL & ASSOCIATES

Suite 701
1620 I Street, NW
Washington, DC 20006-4033
Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

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On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

EPA was under contract to assist the State of New Hampshire on nutrient criteria development and was fully aware of the studies showing nitrogen increases in the estuary had not caused adverse impacts on water quality parameters such as algal levels or transparency. EPA asserted nutrient criteria had to be developed in any event and promoted a transparency approach to regulate TN. (See attached emails between EPA and DES sent between August 7, 2009 and September 28, 2009 verifying this point.).

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

Cc: Great Bay Municipal Coalition



Tony Lapa

From: Basile.Alfred@epamail.epa.gov
Sent: Monday, September 28, 2009 3:48 PM
To: Edwardson, Ken
Cc: Reid.Wendy@epamail.epa.gov; Trowbridge, Philip; Comstock, Gregg; Currier, Paul M.; Tulloch, Megan L.
Subject: RE: Add to [Cause_LUT] ?

Hi Wendy,

We have been working with NH for quite some time on the development of their numeric nutrient criteria for the Great Bay estuary -- a very important achievement for the State. From a standards perspective, the light attenuation coefficient is somewhat analogous to other measures of clarity such as turbidity and TSS. If at all possible, it is very important that we acknowledge this parameter as a cause of impairment. This is one of several parameters, others being turbidity or excess algae, that often lead to a determination that excess nutrients are the problem. Maybe we can talk sometime this week if you would like. Thanks for your time.

Alfred Basile
 U.S. EPA New England
 Water Quality Branch
 1 Congress Street
 Suite 1100 (CWQ)
 Boston, MA 02114

basile.alfred@epa.gov
 tel: (617) 918-1599
 fax: (617) 918-2064

-----"Edwardson, Ken" <Kenneth.Edwardson@des.nh.gov> wrote: -----

To: "Reid.Wendy@epamail.epa.gov" <'Reid.Wendy@epamail.epa.gov'>, Alfred Basile/R1/USEPA/US@EPA
 From: "Edwardson, Ken" <Kenneth.Edwardson@des.nh.gov>
 Date: 09/28/2009 02:04PM
 cc: "Trowbridge, Philip" <Philip.Trowbridge@des.nh.gov>, "Comstock, Gregg" <Gregg.Comstock@des.nh.gov>, "Currier, Paul M." <Paul.Currier@des.nh.gov>, "Tulloch, Megan L." <tulloch@rti.org>
 Subject: RE: Add to [Cause_LUT] ?

Hi Wendy,

We are working with R1 to have a completed and signed 303(d) by the close of the FFY. The ability to assign impairments to our Numeric Criteria for Clarity (light attenuation) is now critical. The database should be reflecting the contents of our water quantity standards. Our standards should not need to be altered to reflect the DB.
http://des.nh.gov/organization/divisions/water/wmb/wqs/documents/20090610_estuary_criteria.pdf

Yes, clarity is an indicator of many other causes just as low dissolved oxygen is an indicator of high nutrients, poor reaeration, high BOD, high SOD, ... but we none the less have numeric criteria for dissolved oxygen and list waters as impaired due to low DO.

Al - Any thoughts you would like to offer here?

What more can we offer to help you in your reconsideration?

Thanks
Ken

Ken Edwardson
NH DES, Water Quality Assessment Program
PO Box 95, 29 Hazen Drive
Concord, NH 03302
P: (603) 271-8864
F: (603) 271-7894
Kenneth.Edwardson@des.nh.gov
<http://des.nh.gov/organization/divisions/water/wmb/swqa/index.htm>

-----Original Message-----

From: Edwardson, Ken
Sent: Wednesday, September 16, 2009 11:46 AM
To: 'Reid.Wendy@epamail.epa.gov'; Tulloch, Megan L.
Cc: Hoskinson, Mellony D.; Reems.Shera@epamail.epa.gov; Trowbridge, Philip
Subject: RE: Add to [Cause_LUT] ?

Hi,

Water clarity is not a direct effect of turbidity and chlorophyll-a. It is an independent measure which provides the best information relative to eelgrass survival potential.

We have set water quality criteria for water clarity.
http://des.nh.gov/organization/divisions/water/wmb/wqs/documents/20090610_estuary_criteria.pdf

Ken

-----Original Message-----

From: Reid.Wendy@epamail.epa.gov [mailto:Reid.Wendy@epamail.epa.gov]
Sent: Wednesday, September 16, 2009 9:58 AM
To: Tulloch, Megan L.; Edwardson, Ken
Cc: Hoskinson, Mellony D.; Reems.Shera@epamail.epa.gov
Subject: RE: Add to [Cause_LUT] ?

Hi Megan and Ken,

I'm sorry for the delay. I wasn't familiar with Light Attenuation and had been waiting to hear back from some of my colleagues for a recommendation on this one. I just spoke with a member of the national survey team who said that Light Attenuation Coefficient is more of an indicator or measurement rather than a cause of impairment. She considers that where the light doesn't filter through as much in lower depths, the cause of impairment would be something more like turbidity or algal blooms, etc, rather than the light attenuation itself. For that reason, I'm reluctant to add Light Attenuation Coefficient as a cause of impairment in the look up table. If the state wants to retain that information, can that information be recorded in another location, such as under observed effects, or as a user flag, or in one of the comment fields instead?

Wendy

Wendy Reid, US EPA, Office of Water
EPA West, Room 7313-J
Phone: 202-566-1705, Fax: 202-566-1331
Mail (USPS): 1200 Pennsylvania Ave NW (4503T), Washington, DC 20460
Delivery (UPS, FedEx): 1301 Constitution Ave NW (7313), Washington, DC 20460
Reid.Wendy@epa.gov

From: "Tulloch, Megan L." <tulloch@rti.org>

To: Shera Reems/DC/USEPA/US@EPA, Wendy Reid/DC/USEPA/US@EPA

Cc: "Hoskinson, Mellony D." <mdhoskinson@rti.org>, "Edwardson, Ken" <Kenneth.Edwardson@des.nh.gov>

Date: 09/16/2009 09:24 AM

Subject: RE: Add to [Cause_LUT] ?

Hey Shera,
Ken kindly reminded me of this request this morning. Can you let me know if you approve this cause being added to the CAUSE_LUT?
Thanks- Megan

From: Tulloch, Megan L.
Sent: Sunday, August 09, 2009 3:41 PM
To: 'Reems.Shera@epamail.epa.gov'; Reid.Wendy@epamail.epa.gov
Cc: Hoskinson, Mellony D.
Subject: FW: Add to [Cause_LUT] ?

Are you ok with adding this to the causes LUT?

From: Edwardson, Ken [mailto:Kenneth.Edwardson@des.nh.gov]
Sent: Friday, August 07, 2009 11:59 AM
To: Tulloch, Megan L.
Cc: Trowbridge, Philip; basile.alfred@epamail.epa.gov
Subject: Add to [Cause_LUT] ?

Hi Megan,

Still trying to finalize the 2008 assessment here and we would like a new Impairment (cause) added to the Impairment_LUT (Cause_LUT) table. I checked http://www.epa.gov/waters/adb/documents/CAUSES_LUT.xls and it

appear we were the most recent requester.

We would like to add,

	Impairment	Light Attenuation Coefficient
	Name	
(Kd)	Impairment	The diffuse light attenuation coefficient
	Desc	is a measure of the rate at which
		photosynthetically active radiation is
		attenuated as it passes down through the
water		column.

We are using it in the context of Nutrients but looking at the ADB
 Impairment_Group_LUT I think the only logical "group" would be "OTHER"

Thanks,
 Ken

Ken Edwardson
 NH DES, Water Quality Assessment Program
 PO Box 95, 29 Hazen Drive
 Concord, NH 03302
 P: (603) 271-8864
 F: (603) 271-7894
 Kenneth.Edwardson@des.nh.gov
<http://des.nh.gov/organization/divisions/water/wmb/swqa/index.htm>

This Email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law or regulation. If you are not the intended recipient or the person for delivering the Email for the intended recipient, be advised that you have received this Email in error and that any use, dissemination, forwarding, printing, or copying of this Email is strictly prohibited. If you believe that you received this Email in error, please notify me at the Department of Environmental Services at 603.271.2471.

Exhibit 6

HALL & ASSOCIATES

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Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

To Whom This May Concern:

This is a request for public records pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Environmental Protection Agency ("EPA") at 40 C.F.R. Part 2. This request is submitted by Hall & Associates on behalf of the Great Bay Municipal Coalition ("the Coalition"). For purposes of this request, the definition of "records" includes, but is not limited to, documents, letters, memoranda, notes, reports, e-mail messages, policy statements, data, technical evaluations or analysis, and studies.

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On May 4, 2012, the Coalition submitted a letter to EPA Administrator Lisa Jackson and Inspector General Arthur A. Elkins, Jr. requesting (1) the review of Great Bay water quality criteria compliance and permitting be withdrawn from EPA Region I and transferred to an independent panel of experts who can assess the scientific basis of the Region's position and (2) the Region's actions leading to this request be investigated by the Office of Inspector General. The May 4, 2012, letter outlined, in detail, why EPA Region I's stance on imposing stringent TN limitations is based on the improper use of data and analyses to support a desired outcome and is not grounded in sound science. Additionally, the letter described how EPA has refused to allow an open peer review with public involvement in the process. Related to this request, the Coalition has met with EPA and submitted supplemental information to Ellen Gilinsky, Senior Policy Advisor, EPA's Office of Water on this issue.

On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

Although available data in 2008 did not show the Great Bay Estuary was nutrient impaired, EPA asked DES to change the impairment listing to "nitrogen impaired" to avoid a potential lawsuit with Conservation Law Foundation. (See attached the internal DES emails sent November 25, 2008, verifying this point, as well as, an email sent from EPA to DES sent on November 25, 2008.).

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

Cc: Great Bay Municipal Coalition

CURRIER - EXHIBIT 35



Re: NH estuary criteria

Alfred Basile,
Stephen Silva to: Jean Brochi,
David
Ann Williams, Ken Moraff, Mel
Cc: Cote, Roger Janson, Stephen
Perkins

11/26/2008 01:51 PM

From: Stephen Silva/R1/USEPA/US
To: Alfred Basile/R1/USEPA/US@EPA, Jean
Brochi/R1/USEPA/US@EPA, David
Pincumbe/R1/USEPA/US@EPA, Matt
Cc: Ann Williams/R1/USEPA/US@EPA, Ken
Moraff/R1/USEPA/US@EPA, Mel
Cote/R1/USEPA/US@EPA, Roger



To everyone involved in this review and preparation of these comments,
nice job! thanks,
Steve

Alfred Basile/R1/USEPA/US

**Alfred
Basile/R1/USE
PA/US**

11/25/2008
12:17 PM

To ptrowbridge@des.state.nh.us, pcurrier@des.state.nh.us,
gcomstock@des.state.nh.us

cc Ken Moraff/R1/USEPA/US@EPA, Stephen
Silva/R1/USEPA/US@EPA, Mel Cote/R1/USEPA/US@E
Roger Janson/R1/USEPA/US@EPA, Phil
Colarusso/R1/USEPA/US@EPA, Matt
Liebman/R1/USEPA/US@EPA, David
Pincumbe/R1/USEPA/US@EPA, Jean
Brochi/R1/USEPA/US@EPA, Ann
Williams/R1/USEPA/US@EPA, Stephen
Perkins/R1/USEPA/US@EPA

Subject NH estuary criteria

Hello Phil:

Thank you very much for your recent draft report on the
development of numeric nutrient criteria for New Hampshire's
estuaries. The EPA provides the following comments to assist in
supporting final criteria recommendations. Overall, we believe
that the approach used to derive impairment thresholds is
scientifically sound. The EPA fully supports the application of a
weight-of-evidence approach and the use of a conceptual model
that tests whether there is a dose-response relationship in the data.
As we have seen in other estuaries, as nitrogen concentrations
increase to unacceptable levels, significant impacts to designated
uses are likely to occur. We strongly encourage you to work as
expeditiously as possible to ensure that the criteria are finalized

and ultimately adopted as water quality standards. Please let us know if we can provide further assistance as you continue to move forward.

General Comments

- 1) Page 2 - it is stated that results reported as less than the method detection level were excluded to avoid bias. Not sure we understand, as this may also introduce bias into the dataset. How many data points were excluded? Please provide greater explanation.
- 2) Page 7 - the section on hyperspectral imagery needs more explanation; what is sidelap? Also, at the TAC meeting it was stated that the hyperspectral imagery was not conclusive (something wrong with calibration of equipment?). More information would be helpful.
- 3) EPA strongly encourages the State to continue to develop both phosphorus and nitrogen criteria for lakes, rivers, and streams. Although nitrogen appears to be the primary controlling nutrient in the Great Bay estuary, elevated levels of both nutrients can significantly impact designated uses in the tributaries.

Chlorophyll a

- 4) Please provide more explanation on the primary contact recreation threshold for chlorophyll as this strongly influences the N criteria. Why is the threshold 15 ug/l in freshwater and 20 ug/l in saltwater?
- 5) A ratio was derived for the Squamscott River to convert the chlorophyll threshold from summer to annual. How applicable is this ratio for other waters?

Dissolved oxygen

- 6) Grab samples for D.O. most likely do not reflect minimum D.O. values and therefore the TN threshold of 0.57 mg/l should be given minimal weight. The sonde data only supports that the D.O. threshold is somewhere between TN of 0.39 mg/l (high end of the range where D.O. is fine) and 0.45 mg/l (low end of the range where D.O. was not fine). When you couple this with the macroalgae data which indicates that TN should be less than 0.42 mg/l to prevent nuisance macroalgae (also an important indicator

of aquatic life impairment) it does not appear that the identified target of 0.5 mg/l TN will be protective of aquatic life.

7) It may be useful to look at the swing in DO concentrations from the Datasondes. Looking at daytime maximums versus night-time minimums on each day at each location may be insightful. Eutrophied areas generally experience hypersaturation during the day followed by night-time crashes in DO.

8) The D.O criterion is 5.0 mg/l minimum; there is no allowance for 10% exceedence of this threshold.

Eelgrass

9) Light Attenuation Coefficient -- We understand the use of the 22% of surface light as the endpoint for the quantity of light needed for eelgrass survival. As cited in your document, the Chesapeake Bay program developed a figure of >22% ambient light as needed for eelgrass survival. It should be noted, however, that this figure refers just to the survival of an adult shoot, it does not guarantee that quantity of light is sufficient to support successful reproduction and production of viable seeds. Reproduction is an energy intensive activity, so successful reproduction will likely require substantially more than 22% ambient light. We do not suggest a recalculation utilizing a different light attenuation coefficient, because a scientifically valid number to address our point is not yet known. We make this point to highlight that this part of the analysis is not conservative and results in a higher nitrogen concentration than what is actually required. However, this target may be more appropriate if the compliance point is upstream in the tidal tributaries, as reported on page 45 of the report, as this would ensure that nitrogen concentrations are less than 0.32 mg/L throughout the vast majority of the estuary.

10) EPA concurs with the assertion that nitrogen strongly contributes to water column turbidity which results in impacts to eelgrass. Even though the analysis is correlative, we are seeing strong relationships in the data and multiple components of the conceptual model have been corroborated.

11) Page 45 - additional research needed; states that deep edge depth (zmax) is needed.. Details on what is involved in zmax estimations and how the zmax information will be used should be included.

10) EPA concurs with the assertion that nitrogen strongly contributes to water column turbidity which results in impacts to eelgrass. Even though the analysis is correlative, we are seeing strong relationships in the data and multiple components of the conceptual model have been corroborated.

11) Page 45 - additional research needed; states that deep edge depth (z_{max}) is needed.. Details on what is involved in z_{max} estimations and how the z_{max} information will be used should be included.

Macroalgae

12) The abundance of nuisance macroalgae is an important indicator of aquatic life use support, in both eelgrass and non-eelgrass areas. More information on the negative impacts of nuisance macroalgae would be helpful so the reader fully understands the importance of this issue.

CURRIER - EXHIBIT 34

Mulholland, Evan

From: Trowbridge, Philip [Philip.Trowbridge@des.nh.gov]
Sent: Wednesday, November 26, 2008 3:46 PM
To: Comstock, Gregg; Currier, Paul M.; Edwardson, Ken
Cc: Diers, Ted
Subject: RE: 303d-EPA wants us to list Gt Bay for N

We would most certainly list GB as impaired in 2010 so this is really a timing issue.

I have always felt uncomfortable when discussing the chloride impairments on I-93 because EPA, not DES, put them on the list. If the listing is inevitable, I think DES should be the one to add the waterbodies to the list, not EPA.

If we are going to add GB, we should take advantage of the opportunity to resolve some other inconsistencies. For example, the TN concentrations are highest in the Cocheco but this AU was not listed because we have not seen high chlorophyll-a there. With the draft criteria, we have a justification for adding the Cocheco River, Upper Piscataqua River, Bellamy River, Great Bay, and Little Bay based on the median TN concentrations in these waterbodies. These waterbodies plus the four already on the list cover all of the GBE down to Dover Point. The only portion of the estuary that would not be impaired for nitrogen would be the Lower Piscataqua and Portsmouth Harbor. At least there would be an even playing field for all watershed municipalities – except for those discharging to the lower Piscataqua (Portsmouth, Newington, Kittery).

-----Original Message-----

From: Comstock, Gregg
Sent: Wednesday, November 26, 2008 10:26 AM
To: Currier, Paul M.; Trowbridge, Philip; Edwardson, Ken
Subject: 303d-EPA wants us to list Gt Bay for N

Hi all,

Al Basile just called.

To avoid a potential lawsuit with CLF, EPA has decided that Gt Bay should be listed for N. The basis for this is Phil's recent nutrient analysis and bar graph showing Gt Bay concentrations exceed the preliminary 0.32 mg/L N threshold for eelgrass. He said that prior to this, Phil Coluruso and Matt Liebman had done some statistical analyses of our data and concluded that Gt Bay should be listed.

I said the reason why we didn't list it is because Phil's analysis was conducted after we submitted the 303d list. It's a timing issue. If after advise from the workgroup, DES decides to use 0.32 mg/L and develops protocols for determining where this value should be applied (ie, where would eelgrass grow), DES will list any additional waters for N in 2010. Al will contact Tom Irwin to see if they would wait until 2010.

If CLF wants Gt Bay listed in 2008 (or they file a lawsuit), Al asked if we would be amenable to amending our 303d list which I presume would mean another public notice. If we don't, EPA would issue a partial approval and take steps to add Gt Bay to our 303d list (through the federal register)

1. Are we at a point where we feel comfortable listing Gt Bay for N?
2. If so, should we wait until 2010 or should we help EPA out and file an amendment to our 303d list (assuming CLF does not agree to wait until 2010).

Please let me know Dec 3

Thanks



CURRIER - EXHIBIT 34

G

Gregg Comstock, P.E.
Supervisor, Water Quality Planning Section
NHDES Watershed Management Bureau
603-271-2983 603-271-7894 (fax)
gcomstock@des.state.nh.us

Exhibit 7:

HALL & ASSOCIATES

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Reply to E-mail:
jhall@hall-associates.com

October 22, 2012

VIA E-MAIL

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW (2822T)
Washington, D.C. 20460
E-mail: hq.foia@epa.gov

RE: Freedom of Information Act Request for Records Associated with EPA's Response to the Great Bay Municipal Coalition's Scientific Misconduct Letter

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On September 27, 2012, Nancy Stoner, EPA's Acting Assistant Administrator, responded to the Coalition stating EPA "has not seen any evidence that Region I engaged in scientific misconduct." The letter does not offer any explanation that indicates specific allegations raised by the Coalition were actually in error or false. This FOIA request seeks any such information regarding specific allegations.

Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

EPA first informed the state it must formally adopt the new numeric criteria and then, after Conservation Law Foundation threatened to sue EPA if Great Bay wasn't listed as nutrient impaired, EPA told the state criteria adoption wasn't needed. (See attached excerpts from Matthew Liebman (EPA) September 30, 2005 PowerPoint presentation entitled "Estuarine Nutrient Criteria" verifying this point, as well as, an internal EPA email sent on August 18, 2009.).

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

Cc: Great Bay Municipal Coalition

CURRIER - EXHIBIT 37

Re: Fw: Request for revisions to the New Hampshire 2008 303(d) list to include Great Bay tidal waters assessments based on new nutrient criteria

Ann Williams

to:

Alfred Basile

08/18/2009 11:56 AM

Cc:

Beth Edwards, Stephen Silva

Show Details



I've only glanced briefly at this. One thing that caught my attention was Paul's reference in the cover letter to numeric nutrient criteria that DES published in June 2009. Because these criteria have not been adopted into the WQS and submitted to EPA for review and approval, it's important to make clear that these are not formal "criteria" but rather are based on DES's interpretation and application of the State's existing narrative criteria. Let me know if you have questions or want to discuss.

Alfred Basile/R1/USEPA/US

08/17/2009 09:39 AM

To

Beth Edwards/R1/USEPA/US@EPA, Stephen Silva/R1/USEPA/US@EPA, Ann Williams/R1/USEPA/US@EPA

cc

Subject

Fw: Request for revisions to the New Hampshire 2008 303(d) list to include Great Bay tidal waters assessments based on new nutrient criteria

Hello all,

Attached is a letter from NHDES requesting amendment of the 2008 303(d) list to add Great Bay waterbody segments for N.

I'm working off-site today (508-347-8029) and then on leave tue, wed, and fri this week.

-----Forwarded by Alfred Basile/R1/USEPA/US on 08/17/2009 09:33AM -----

To: Alfred Basile/R1/USEPA/US@EPA

From: "Currier, Paul M." <Paul.Currier@des.nh.gov>

Date: 08/14/2009 04:32PM

cc: "Stewart, Harry" <Harry.Stewart@des.nh.gov>, "Comstock, Gregg"

<Gregg.Comstock@des.nh.gov>, "Trowbridge, Philip"

<Philip.Trowbridge@des.nh.gov>, "Edwardson, Ken"

<Kenneth.Edwardson@des.nh.gov>

Subject: Request for revisions to the New Hampshire 2008 303(d) list to

CURRIER - EXHIBIT 37

include Great Bay tidal waters assessments based on new nutrient criteria

Hi Al - Here is a letter request for revisions to the New Hampshire 303(d) list, together with the details of the revised assessments for Great Bay tidal waters on which the request is based. A hard copy is in the mail. Don't hesitate to call or email if you have questions.

Paul M. Currier, PE, PG
Watershed Management Bureau Administrator
Water Division, NH Department of Environmental Services
29 Hazen Drive, PO Box 95
Concord , NH 03302-0095
603.271.3289 fax 603.271.7894
paul.currier@des.nh.gov

[attachment "20090814 Transmittal Letter to EPA.pdf" deleted by Ann Williams/R1/USEPA/US] [attachment "20090813 2008 303d List Update for Nitrogen and Belgrass.pdf" deleted by Ann Williams/R1/USEPA/US]

CURRIER - EXHIBIT 29



Estuarine Nutrient Criteria

Presentation to New Hampshire Estuaries
Project Technical Advisory Committee
Matthew Liebman, EPA New England

New Hampshire Estuaries Project
September 30, 2005



“We have a lot of problems, so let’s get started”

- EPA’s Nutrient strategy
 - Nutrients are a problem
 - Identify nutrient and biological levels below which nuisance or impaired conditions are unlikely to occur; thus designated uses are protected
 - Apply ecoregional reference condition approach, or effects based approach
 - Adopt criteria into state water quality standards
- Examples from lakes and streams
- Factors to think about in developing nutrient criteria
- Expectations from EPA, a national perspective, and examples from regional/state workgroups

Exhibit 8

HALL & ASSOCIATES

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Telephone: (202) 463-1166 Web: <http://www.hall-associates.com> Fax: (202) 463-4207

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October 22, 2012

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Request:

As part of the Coalition's submissions to EPA, the following statement and supporting documentation were provided:

The documentation provided to the peer reviewers excluded the numerous prior analyses and data evaluations (most of which were developed by DES and presented to EPA) that confirmed (1) nitrogen had not caused excessive plant growth in the system; (2) system transparency had never changed during the period of apparent eelgrass decline; (3) color and turbidity, not nutrients, controlled system transparency; (4) the causes of changing of eelgrass populations were unknown; and (5) Great Bay was not a "transparency-limited" system. (See Mr. Trowbridge's PowerPoint presentations from June 15, 2006; February 14, 2007; November 8, 2007; and March 25, 2008, previously submitted to EPA Headquarters.).

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsive to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

Sincerely,

/s/ John C. Hall

JOHN C. HALL

Cc: Great Bay Municipal Coalition

Exhibit 9

Exhibit 9

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Exhibit 9

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Request:

As part of the Coalition's submissions to EPA, the following statement was provided:

This peer review occurred without considerations of EPA's 2009 Science Advisory Board peer review, which concluded the type of "stressor-response" analysis used to generate the stringent TN criteria was not "scientifically defensible," did not demonstrate "cause and effect," and could misallocate local resources.

Please provide us with all records or factual analyses that show this statement is incorrect.

Please contact the undersigned if the associated search and duplication costs are anticipated to exceed \$250.00. Please duplicate the records that are responsible to this request and send them to the undersigned at the above address. If any requested records are withheld based upon any asserted privilege, please identify the basis for the non-disclosure. Moreover, to the extent EPA asserts that a document, or portions thereof, is privileged, the Agency is still responsible for producing the non-privileged portions of that document. If you have any questions regarding this request, please do not hesitate to contact this office so as to ensure that agency resources are conserved and only the necessary documents are reproduced.

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